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10 UNITED STATES DISTRICT
11 FOR THE EASTERN DISTRICT OF WASHINGTON

12 UNITED STATES OF AMERICA,

13 Plaintiff,

14 vs.

15 AMANDA GAYLE FERGUSON,

16 Defendant.

Case No. 2:18-CR-00105-SAB

United States' Sentencing
Memorandum

17 Plaintiff, United States of America, by and through William D. Hyslop,
18 United States Attorney for the Eastern District of Washington, and Timothy J.
19 Ohms, Assistant United States Attorney, submits herewith its Sentencing
20 Memorandum.

21 The Defendant's advisory Guideline range is 130 to 162 months based on an
22 adjusted offense level of 27 and a Criminal History Category of VI (with 21
23 criminal history points). PSR ¶ 49, 126. The maximum penalty for the offenses in
24 this case is 10 years. ECF No. 3. Thus, the Court would have to impose
25 consecutive sentences in order to sentence the Defendant within the Guideline
26 range. The plea agreement dismissed Count 8, which carried a mandatory
27 minimum penalty of 5 years and a higher maximum penalty of 40 years. ECF Nos.
28 3, 40 at 10. The dismissal of Counts 5 and 8 were designed in part to prevent the

1 loss of the Defendant's widow's pension. Pursuant to the plea agreement, the
2 government is bound to recommend a sentence within a range of 92 to 115 months.
3 ECF No. 40 at 12. The Defendant was permitted to recommend a sentence as low
4 as 70 months, which the Defendant has done through her Sentencing Memorandum
5 filed on October 25, 2019. ECF Nos. 40, 57.

6 The government does not believe that a 70-month sentence (five years and
7 10 months) is sufficient to achieve the goals set forth in 18 U.S.C. § 3553(a). The
8 government is recommending a sentence of 96 months (8 years) as sufficient but
9 not greater than necessary to achieve those goals.

10 The defense sentencing argument emphasizes the need for drug treatment
11 and explains the Defendant's criminal conduct as a reaction to the loss of her
12 husband in 2007 and the negative influences of subsequent relationships. Clearly,
13 the Defendant has experienced tragic and profound loss, but that loss neither
14 justifies nor fully explains her subsequent criminal conduct.

15 The PSR reflects that the Defendant began abusing controlled substances
16 early in life. Her abuse of alcohol led to her first arrest for DUI at the age of 19.
17 PSR ¶ 55. The Defendant was using controlled substances by the age of 14. PSR
18 ¶ 153. Although she appears to have had access to drug rehabilitation programs
19 from an early age, these were not successful. PSR ¶ 153. She also appears to have
20 had the benefit of a loving and supportive relationship from her father and
21 stepmother. PSR ¶ 152. It is not uncommon for persons who abuse drugs to
22 become involved in criminal conduct and in unhealthy relationships with others
23 who are also involved in the use or distribution of drugs. Indeed, the correlation
24 between drug use and an increased propensity to commit crime is recognized by
25 the Sentencing Guidelines, which caution against downward departures based on
26 drug or alcohol dependence or abuse:
27
28

1 Drug or alcohol dependence or abuse ordinarily is not a reason for a
2 downward departure. Substance abuse is highly correlated to an
3 increased propensity to commit crime.

4 USSG §5H1.4. Some of the reasons for this correlation are exemplified in the
5 present case. The Defendant has a significant criminal history involving identity
6 theft and other property crimes. PSR ¶¶ 65, 82, 84, 85, 89, 94, 98, 105. Indeed the
7 Defendant has 19 criminal history points derived from prior convictions and 2
8 additional points for recency. PSR ¶¶ 124-126. This criminal conduct helped
9 support the Defendant's abuse of controlled substances. Similarly, the Defendant
10 maintained several relationships, despite allegations of abuse, because they
11 provided her with access to controlled substances. PSR ¶¶ 155, 161. Based on the
12 Defendant's personal history as outlined in the PSR, the Defendant's abuse of
13 drugs and the collateral consequences of that drug abuse prevented her from
14 maintaining potentially more productive relationships with family members,
15 including her own children. PSR ¶¶ 151, 156, 158. These circumstances are tragic,
16 but a history of criminal conduct and destructive relationships in order maintain
17 one's access to drugs is not mitigating.

18
19 Clearly, the Defendant is in need of a prolonged period of drug treatment.
20 Without successful long-term treatment, she will present a continued danger to the
21 community through continued criminal conduct. A longer sentence in this case
22 may provide greater opportunities for treatment. The potentially productive
23 relationship between custody and treatment is highlighted in one of the letters
24 submitted by the Defendant, in which the author noted:

25 She does well when she's in jail. I think it's because of the controlled
26 environment. Since I've known her she has completed many self-help
27 programs as well as completed jail sentences. The problem is when
28 she get[s] out.

ECF No. 53-2 (corrected as to form).

1 As with much of the Defendant's past criminal conduct, the offense conduct
2 in the present case appears to have been motivated by the Defendant's desire to
3 both support her drug use and to maintain her access to drugs. The Defendant was
4 not forced into this conduct or manipulated by others. Indeed, following the arrest
5 of the Defendant's partner, N.R., the Defendant called the confidential informant
6 (CI) working with the ATF to explain that N.R. had been arrested but that she
7 would be able to continue without him. Later that day, September 19, 2016, the
8 Defendant, accompanied by another woman, met with the CI. The CI was
9 accompanied by an ATF agent working in an undercover capacity (UC), and
10 introduced the UC to the Defendant. The UC stepped in for the CI for all future
11 transactions, which were also audio and video recorded. Thus, the strength of the
12 evidence for this and all future transactions was high. During that first meeting, the
13 Defendant sold the UC 3.96 grams of methamphetamine. (Count 5). The woman
14 accompanying the Defendant offered to sell an airsoft gun, which the UC declined
15 to purchase. Nevertheless, the Defendant expressed an awareness of the prior
16 transactions involving N.R. and assured the UC that she would be able to continue
17 them.
18

19 Thereafter, on September 28, 2016, the Defendant and a person identified as
20 "Bambi" attempted to sell the CI an AR-15 at the Northtown Mall. The Defendant
21 arranged the transaction but backed out of it after she reported seeing flashing
22 police lights in the area.
23

24 On October 6, 2016, the Defendant sold the UC a stolen Smith and Wesson
25 .38 Special revolver in the parking lot of the Chinese Restaurant on North
26 Division. (Counts 6, 7). During the transaction, the Defendant indicated that she
27 could obtain methamphetamine for the UC and additional "pen" guns like the
28 cigar-size improvised shotgun sold by N.R. on August 1, 2016. (Counts 2, 3, 4).

1 On October 7, 2016, following the Defendant's offer to sell additional
2 methamphetamine, the Defendant delivered approximately one ounce of
3 methamphetamine to the UC. The transaction was a hand-to-hand delivery from
4 the Defendant to the undercover ATF agent and was recorded. When the
5 Defendant got into the UC's car, she pulled a clear plastic bag containing the
6 methamphetamine from under her shirt. The UC weighed the bag on a portable
7 scale. When she found that the bag weighed only 25.5 grams, the Defendant
8 produced a second bag of methamphetamine and removed a portion of the
9 methamphetamine to add to the bag being delivered to the UC. During the
10 transaction, the Defendant showed the UC photographs of a disassembled tommy
11 gun that she was also offering for sale.
12

13 The following day, October 8, 2016, the Defendant sent the UC a text
14 message asking if she was interested in buying a sawed-off 12 gauge shotgun. The
15 UC told the Defendant that she was out of town, and the Defendant agreed to hold
16 the shotgun for a few days until the UC returned. On October 10, 2016, the
17 Defendant met the UC at the same restaurant parking where they met on October 6,
18 2016. The Defendant delivered the shotgun, which was concealed in clothing.
19 (Counts 9, 10). The UC paid the Defendant for the shotgun and paid her an
20 additional fee for holding the shotgun for her. During the transaction, the
21 Defendant indicated that she was able to provide additional firearms and
22 methamphetamine.
23

24 A few days later, on October 13, 2016, the Defendant sent the UC a text
25 message indicating that she had something that the UC was going to want and that
26 she would have some additional "pen" guns soon. The UC called the Defendant
27 and learned the "something" that she believed the UC would want was a
28 "grenade." The Defendant indicated that the "grenade" was live and was for sale

1 for \$175. To encourage the sale, the Defendant sent the UC photos of the
2 “grenade” by text message. The UC met the Defendant in a restaurant parking lot.
3 The UC brought the “grenade” into the UC’s car in a blue and red zippered pouch.
4 The UC confirmed that it was a military flash-bang grenade and placed in the trunk
5 of her car. During the transaction, the Defendant told the UC that she could get
6 more “grenades” and relayed that she had once sold “some Mexicans” a state
7 trooper uniform for “a lot of money.” She explained that she has access to these
8 things “because I sell dope.”
9

10 The offense conduct in this case is exceptional for offenses related to the
11 possession of firearms. The seriousness of the conduct weighs in favor of a harsher
12 sentence in order to ensure that the sentence reflects the nature and seriousness of
13 the offense and the Defendant’s extensive history of criminal conduct. A harsher
14 sentence is also justified in order to avoid unwarranted sentencing disparities with
15 persons who are similarly situated. Indeed, a person with much less criminal
16 history (that is, 9 fewer criminal history points) would be facing the same
17 Guideline range as the Defendant in this case. Finally, a harsher sentence is also
18 merited to deter the Defendant from future criminal conduct, to promote respect for
19 the law, to protect the community from future crimes by the Defendant, and to
20 provide adequate time for drug treatment and rehabilitative vocational training
21 while in custody.

22 The government is concerned that the Defendant still fails to fully grasp the
23 seriousness of her conduct. In her written statement of elocution (ECF No. 54), the
24 Defendant explained that she did not fully appreciate the seriousness of her
25 conduct because she had grown up using firearms and viewed them more as
26 “tools” than as weapons. This line of reasoning might have been more plausible if
27 the Defendant had been selling hunting rifles, rather than a stolen handgun, a “pen”
28

1 gun designed to fire a shotgun shell, a sawed-off shotgun, and a “grenade.” The
2 transactions are all interspersed with the delivery of methamphetamine and offers
3 to obtain additional methamphetamine and firearms, including additional “pen”
4 guns and “grenades.” No reasonable adult could fail to appreciate the seriousness
5 of this conduct in today’s world. The sentence imposed should help communicate
6 that seriousness.

7 Finally, the government has considered mitigating circumstances in this
8 case. This is a case in which all of the transactions with the Defendant involved an
9 undercover agent and were fully recorded. Thus, the litigation risk of pursuing this
10 matter to trial for the government was minimal. The Defendant was the one who
11 initiated contact with the confidential informant following the arrest of N.R., and
12 who continued to reach out for the UC with new offers of firearms and
13 methamphetamine for sale. The plea agreement in this case was the result of
14 prolonged negotiations with Defendant’s counsel and prior counsel. The agreement
15 reached resulted in the dismissal of the most serious drug charges, which preserved
16 the Defendant’s widow’s pension and reduced the maximum penalty from 40 years
17 to 10 years for each count. The advisory Guideline range of 130 to 162 months is
18 not unreasonable in this case. The negotiated resolution that bound the government
19 to recommend a sentence within the range of 92 to 115 months encompassed
20 elements of a charge bargain and sentencing compromises that benefited the
21 Defendant. The sentence recommended by the government of 96 months is almost
22 three years below the low-end of the Guideline range.

23 The government believes that the Defendant has been treated fairly in this
24 case, and that its recommendation of a sentence of 96 months is appropriate in light
25 of the seriousness of the offense conduct, the Defendant’s extensive criminal
26 history, and the need to protect the community while providing long-term
27
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1 treatment and vocational rehabilitation opportunities for the Defendant. The
2 recommendation is further warranted to promote respect for the law, to deter
3 future criminal conduct, and to avoid unwarranted sentencing disparities.
4

5 Dated November 1, 2019.

6 William D. Hyslop
7 United States Attorney

8 s/ Timothy J. Ohms
9 Timothy J. Ohms
10 Assistant United States Attorney
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12
13 **CERTIFICATE OF SERVICE**
14

15 I hereby certify that on November 1, 2019, I electronically filed the
16 foregoing with the Clerk of the Court using the CM/ECF system which will send
17 notification of such filing to the counsel of record.
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19
20 s/ Timothy J. Ohms
21 Timothy J. Ohms
22 Assistant United States Attorney
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